

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

MANUEL PAUL BLACKMON,

Petitioner,

v.

No. 16-CV-000006-RB-KBM

A.J. SMITH,

Defendant.

SECOND ORDER TO ANSWER OR SHOW CAUSE

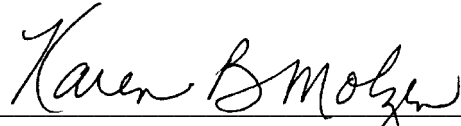
This matter is before the Court, *sua sponte*. On February 22, 2016, the Court granted Petitioner's application to proceed IFP, construed Petitioner's Amended Petition [Doc. 8] as a petition attacking the execution of Petitioner's federal sentence in *United States of America v. Blackmon*, 12-CR-02006-RB pursuant to 28 U.S.C. § 2241, and ordered Respondent to file an answer to the Amended Petition within twenty-three days. [Doc. 10] Respondent failed to file an answer to the Amended Petition and, therefore, the Court ordered Respondent "to file its answer to the Amended Petition within fourteen days or show cause why sanctions should not be imposed, up to and including the possibility of granting the relief requested in the Amended Petition." [Doc. 11] The docket reflects that the Court's Order to Answer or Show Cause [Doc. 11], Order Granting Application to Proceed In Forma Pauperis and To Answer [Doc. 10] and the Amended Petition [Doc. 8] was placed in the interoffice mailbox for the United States of America, but it does not reflect that these documents were mailed to Respondent Smith. As of this date, no answer or response to the Court's Order to Answer or Show Cause has been filed. Therefore, the Court will enter a second order to answer or show cause, requiring Respondent Smith to file an answer or other responsive pleading within twenty-three days of the date of this order.

Petitioner is not yet serving his federal sentence and Petitioner's Amended Petition challenges his future federal custody. *See* 18 U.S.C. § 3585(a) ("A sentence to a term of imprisonment commences on the date the defendant is received in custody awaiting transportation to, or arrives voluntarily to commence service of sentence at, the official detention facility at which the sentence is to be served."). Rule 2 of the Rules Governing Section 2254 Cases in the United States District Courts provides that a Petitioner challenging future custody must name as a Respondent his immediate custodian and his future custodian. *See* Rule 2(b) of the Rules Governing Section 2254 Cases; *see also* Rule 1(b) of the Rules Governing Section 2254 Cases. Because the United States of America is Petitioner's future custodian, the Clerk of the Court will be directed to add the United States of America to the caption as a defendant. The United States of America will have twenty-three days, from the date of this order, to file an answer to the Amended Petition or other responsive pleading.

IT IS THEREFORE ORDERED that Respondent Smith shall answer the Amended Petition within twenty-three days from the entry of this Order or show cause why sanctions should not be imposed;

IT IS FURTHER ORDERED that Clerk of the Court is directed to add the United States of America to the caption as a Respondent; and the United States of America shall answer the Amended Petition within twenty-three days from the entry of this Order;

IT IS FURTHER ORDERED that the Clerk is directed to forward copies of this Order, the Amended Petition [Doc. 8], the Court's Order to Answer or Show Cause [Doc. 11], and the Court's Order Granting Application to Proceed *In Forma Pauperis* (IFP) and To Answer [Doc. 10] to Respondent Smith at the Lea County Correctional Facility, 6900 West Millen, Hobbs, New Mexico 88244 and to Respondent United States of America.

Handwritten signature of Karen B. Moynihan in black ink.

UNITED STATES CHIEF MAGISTRATE JUDGE